

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

DESHAWN HANDY, : C.A. No. S08M-10-018 ABH
Petitioner, :
v. :
STATE OF DELAWARE, :
Respondent. :

COMMISSIONER’S ORDER

Petitioner Deshawn Handy (“Petitioner”) has filed a petition pursuant to 16 *Del. C.* § 4784(j)¹ and Superior Court Civil Rule 71.3(c) (“Rule 71.3”)² seeking the return of \$9,940.00 in

¹In 16 *Del. C.* § 4784(j), it is provided as follows:

Property seized pursuant to this section that is not summarily forfeited pursuant to subsection (f) of this section shall be automatically forfeited to the State upon application to the Superior Court if, within 45 days of notification of seizure to all known parties having possessory interest in the seized property by registered or certified mail to the last known post-office address of the parties in interest and by publication in a newspaper of general circulation in this State, the person or persons claiming title to the seized property do not institute proceedings in the Superior Court to establish:

- (1) That they have the lawful possessory interest in the seized property; and
- (2) The property was unlawfully seized or not subject to forfeiture pursuant to this section.

²In Superior Court Civil Rule 71.3(c), it is provided in pertinent part as follows:

Petition for the return of property. An owner or interest holder may seek the return of property seized by the State pursuant to 16 *Del. C.*, § 4784 by filing, costs prepaid, a civil petition, with the Superior Court sitting in the County in

United States currency (“the currency”) which the State of Delaware (“the State”) seized from a vehicle in which Petitioner was riding.

The petition was referred to the Commissioner. A hearing on the petition took place on April 2, 2009. This constitutes my decision and order in the matter which is rendered pursuant to Administrative Directive of the President Judge of the Superior Court, No. 2007-5.

SUMMARY OF THE EVIDENCE

The State called several witnesses to testify. A summary of each witness’s testimony is set forth below.

Corporal Justin James Galloway testified.

He currently works for the Delaware State Police (“DSP”) and is stationed at Troop 5. He has worked for DSP for eight years.

On May 26, 2008, at approximately 0145 hours, Corporal Galloway was patrolling Church Road in Sussex County, Delaware, in a residential area where there had been complaints about speeders. The area’s speed limit is 25 miles per hour. Corporal Galloway clocked a 2000 Gray Lincoln LS traveling 37 miles per hour in this 25 mile per hour zone. He stopped the vehicle. In the vehicle were the driver, a front seat passenger, and a rear seat passenger. Before the stop, Corporal Galloway noticed movement between the front and back seat passengers.

The driver was Quentin Thomas. The front seat passenger was Jeremiah Handy. The back seat passenger ultimately was determined to be Petitioner; however, he initially identified himself as Corey Morris.

which the property was seized no later than 45 days after the date of the notice required by 16 Del. C., § 4784(j) measured from the date of mailing or the date of publication whichever shall be later.

The Officer noticed that Petitioner would not look at him.

The Officer returned to his vehicle and ran a criminal check to see if any of the persons in the vehicle were wanted.

The Officer learned that Corey Morris' middle initial was "T." He also obtained Mr. Morris' social security number. When he questioned Petitioner further about his identity, Petitioner could not provide Corey Morris' middle initial or the correct social security number. Corporal Galloway charged Petitioner with criminal impersonation. The Officer placed Petitioner in the front seat of the patrol vehicle.³

At some point during this time frame, Corporal Ballinger arrived.

Jeremiah Handy, the front seat passenger, was removed from the vehicle, and Corporal Ballinger held him around the back of the vehicle.

After obtaining permission to do so, Corporal Galloway began to search the vehicle. The Officer opened the glove box and found a Crown Royal® bag. He asked Jeremiah Handy, who was standing at the back of the vehicle with Corporal Ballinger, what it was. Jeremiah Handy said he did not know. Corporal Galloway then heard a struggle and when he turned, he saw Jeremiah Handy struggling with Corporal Ballinger. Jeremiah Handy took off across State Route 20 into a field area. Another unit arrived and searched for Jeremiah Handy, but did not locate him at that time.⁴

³After running Petitioner's fingerprints, the Officer determined Petitioner's true identity and learned he was wanted by several courts for capiases, an outstanding violation of probation, and an outstanding warrant. Petitioner himself never confirmed his identity.

⁴Jeremiah Handy was indicted on charges of resisting arrest with force and hindering prosecution to prevent the apprehension of Deshawn Handy and he later pled guilty to these charges. *State of Delaware v. Jeremiah Handy*, Del. Super., Def. ID# 0805036980.

In the Crown Royal® bag was a minimal amount of a green leafy substance which tested positive for cannabis. Also in the bag were ten bundles of currency; each bundle contained \$1,000.00, for a total amount of \$10,000.00. [The DSP counted out \$9,940.00 and it wrote out the receipt for that amount. That is the amount Petitioner seeks to recover. However, Corporal Galloway explained that the DSP undercounted the currency. The officers who work with the Special Law Enforcement Assistance Fund counted out \$10,000.00.]

When questioned, Petitioner and Quentin Thomas denied ownership of the bag and its contents.

On May 27, 2008, Sarah Handy appeared at the Troop to obtain the return of the vehicle, which was registered to her. They asked her if the vehicle contained anything of value. She said there was a Crown Royal® bag in it which was hers and which contained \$9,000.00. When the officers told her about the drugs in the bag, she then said the bag and money belonged to her niece, who planned to use the money to buy a house. The officers tried to contact the niece, but were unsuccessful.

Neither Sarah Handy nor the niece filed a petition seeking the return of the currency.

On cross-examination, Corporal Galloway confirmed that Jeremiah Handy was not handcuffed at the time he escaped. He also explained that no one was charged with possession of marijuana in this situation because the policy is not to charge in cases where there are only trace amounts of a drug.

The next witness for the State was Sergeant William D. Crotty, who has worked for the DSP for thirteen years.

On January 3, 2007, Sergeant Crotty was working with the DSP Drug Unit. The other

DSP officers were Detective Wright and Detective Snyder. They were in the Polly Branch area of Selbyville, Delaware. Detective Wright bought crack cocaine from Petitioner. Petitioner was indicted on charges of delivery of cocaine and possession of drug paraphernalia (a plastic baggie). Petitioner entered into a plea of *nolo contendere* to delivery of cocaine. *State of Delaware v. Deshawn C. Handy*, Del. Super., Def. ID# 0702002922.

The State thereafter called National Guardsman Staff Sergeant Talabisco to testify.

Staff Sergeant Talabisco is assigned to the Counter-Drug Task Force. He has been with the National Guard for ten years. He currently operates an ion scanner. He has been certified to do so since 1998.

Currency in the general population has an ion scan result for cocaine at 150 digital units. Staff Sergeant Talabisco doubles that amount and establishes his baseline for cocaine at 300 digital units. The cocaine reading on the seized currency which he tested reached a high of 1082 digital units.

The State rested. Petitioner's evidence for his case consisted only of his testimony.

The seized currency was his. He earned it doing side jobs "under the table". He did not have a "real" job because he was wanted for a violation of probation and he would have been captured if he had a job of record. He planned to use the money for a place to stay.

On cross-examination, Petitioner testified to the following.

He admitted convictions for burglaries and thefts, i.e., crimes of dishonesty.

His side jobs consisted of cutting grass, washing cars, chopping wood, and other labor jobs. On January 3, 2007, he was not selling drugs. He pled and obtained the conviction in the drug case because he did not have a "paid" lawyer.

He started saving the money in 2007, while he was on the run from probation. He did not have a bank account. He put all of his life savings in a Crown Royal® bag and put the bag into a glove compartment of a car he did not own.

He was going to buy a car with the money. When questioned about his previous testimony that he planned to get a place with the money, he explained he was going to do both.

He admitted that some of his paperwork filed in this matter contained information that he obtained the seized currency during the years 2003 and 2004. He admitted that information differed from his current testimony that he acquired the seized currency in 2007.

He stated he was not honest at the time of his arrest when he lied about his identity and when he denied ownership of the bag or its contents. He lied because he was afraid.

Finally, he was not dealing drugs at any time from January, 2007, until his apprehension.

FINDINGS OF FACT

I initially must make a credibility determination. Defendant is not credible. His stories change to suit whatever is in his best interest at the current time. I do not accept any of his testimony.

The currency was located in the same bag as a substance which tested positive for cannabis; i.e., an illegal drug.

I infer, based upon the fact that neither of the other persons in the vehicle was willing to lay claim to money which was found with the cannabis, that the currency belonged to Petitioner. This conclusion is buttressed by the fact that once Sarah Handy learned the currency was stored with drugs, she refuted ownership of the currency. Obviously, the others did not have any investment in the currency which made claiming it worth risking a drug charge. Only Petitioner

was willing to take on that risk.

I further find that Petitioner obtained the currency by selling drugs. I base this finding upon the following facts. The money was in a Crown Royal® bag with a small amount of cannabis. Petitioner has a conviction for dealing cocaine. Petitioner did not have a visible means of support; yet he had \$10,000.00 in cash in a Crown Royal® bag which he was carrying around with him. Furthermore, he was hiding that bag from the police at the time of the stop and he denied ownership of the bag or the currency. He did not know the exact amount of the money seized; he sought the return of \$9,940.00 when the actual amount seized was \$10,000.00. Had he earned that money legally, he would have known the exact amount, would have kept it on his person and would have asserted how he acquired it rather than deny its ownership.

DISCUSSION

Delaware's drug forfeiture statute was enacted to "cripple the trafficking and sale of illegal drugs." *In the Matter of One 1987 Toyota*, 621 A.2d 796, 798 (Del. Super. 1992).

"[T]he State has an initial burden of proving probable cause [for the institution of a forfeiture]...." *Brown v. State*, 721 A.2d 1263, 1265 (Del. 1998). Probable cause is "'a reasonable ground for belief of guilt, supported by less than prima facie proof but more than mere suspicion.'" *Matter of One 1987 Toyota*, 621 A.2d at 799 (quoting from *United States v. Premises Known as 3639-2nd St., N.E., Minneapolis, Minnesota*, 869 F.2d 1093, 1095 (8th Cir. 1989)).

In the case of *Brown v. State*, 721 A.2d at 1265, the Supreme Court, quoting from 16 *Del. C. § 4784(a)(7)a.*, states:

With regard to money, the Forfeiture Act states that "all moneys ... found in close proximity to forfeitable controlled substances ... are presumed to be forfeitable"

What constitutes "close proximity" was examined in the case of *In the Matter of: \$1,165.00 U.S. Currency*, Del. Super., C.A. No. 95M-05-009-RSG, Reynolds, Commissioner (March 6, 1997) at 11-14, and I quote therefrom:

"Close proximity" is a relative term. However, there are many cases construing identical or similar language in various forfeiture statutes in a number of states and localities. Analysis of those cases indicates that close proximity is not usually determined in the abstract. Rather, the courts tend to consider the totality of circumstances in determining whether seized money is in close enough proximity to illegal drugs or paraphernalia to raise an inference that the money was used in, or derived from, drug dealing. However, some courts have held that "money found on or near a person who is committing, attempting to commit or conspires to commit any of the specifically enumerated [drug] offenses is presumed forfeitable – period."

The "close proximity" provision applying to money in the Act does not appear to have been previously construed by this Court. However, in construing other provisions of the statute, this Court has utilized a probable cause approach. In applying the test, this Court took into account the totality of the circumstances, Therefore, in determining whether the \$1,165.00 USC in this case was sufficiently in "close proximity" to the marijuana in the vehicle trunk to raise a presumption that the money is forfeitable, it is necessary to look to the totality of the circumstances. [Citations and footnotes omitted.]

In this case, the State has met its burden in two ways: by establishing the close proximity presumption and by showing, through the totality of the circumstances, that the currency seized constituted proceeds from the sale of drugs.

The currency was located in a bag with an illegal substance. Thus, the close proximity presumption applies.

In addition, the totality of the circumstances shows the currency constituted proceeds from the sale of drugs. Petitioner was a convicted drug dealer. He hid the currency from the police and initially denied its ownership. He did not know the exact amount of currency in the bag; i.e., he demanded a return of \$9,940.00, but the actual amount seized was \$10,000.00. He had no visible means of support and, yet, had in his possession \$10,000.00 in United States

currency. Petitioner obtained the seized currency by selling drugs.

Thus, the State established probable cause to believe the currency was furnished or intended to be furnished in exchange for a controlled substance.

Once the State meets its burden, then Petitioner must rebut the State's case. 16 *Del. C.* § 4784(a)(7)a.; *Brown v. State*, 721 A.2d at 1265. The Petitioner must show by a preponderance of the evidence:

- (1) That they have the lawful possessory interest in the seized property;
- and
- (2) The property was unlawfully seized or not subject to forfeiture pursuant to ... [the forfeiture statute].

16 *Del. C.* § 4784(j).

In this case, Petitioner does not attempt to show the property was unlawfully seized. Instead, he attempts to establish that the currency was not subject to forfeiture because it was not related to illicit drug activity. However, I have rejected that contention by finding Petitioner's testimony not to be credible and by finding that the currency derived from the proceeds of illegal drug sales. Thus, Petitioner has not met his burden of establishing that the currency was not related to illicit drug activity.

The currency must be forfeited and Petitioner's request for the return of his property must be denied.

CONCLUSION

Based on the foregoing, I conclude as follows:

- 1) The State established probable cause to have initiated the forfeiture proceedings;
- 2) Petitioner has not met his burden of proving the seized currency was not forfeitable;
- 3) Petitioner is not entitled to the return of the currency and the currency must be forfeited

to the State;

4) If either party wishes to file an appeal from this decision pursuant to Superior Court Civil Rule 132, then it must do so on or before **April 28, 2009**;

5) Absent an appeal, the decision in this matter shall become final on April 29, 2009, and the Court will enter an order without further notice which shall:

i) Deny Petitioner his petition for return of the \$9,940.00 in United States currency;

ii) Order the \$10,000.00 in United States currency be forfeited to the State; and

iii) Order that the \$10,000.00 in forfeited monies be deposited in the Special Law Enforcement Assistance Fund.

IT IS SO ORDERED THIS _____ DAY OF APRIL, 2009.

Commissioner

cc: Prothonotary's Office
Deshawn Handy, SBI# 00342770
Robert J. O'Neill, Jr., Esquire